

MAX LAIR

IBLA 85-116 Decided May 30, 1985

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 3833.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

The owner of an unpatented mining claim located after Oct. 21, 1976, is required to file a copy of the official record of the notice of location or certificate of location of the mining claim with the proper BLM office within 90 days after the date of location. The failure to file the required document shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

APPEARANCES: Max Lair, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Max Lair has appealed from a September 25, 1984, decision of the California State Office, Bureau of Land Management (BLM), returning his location notices for 106 association placer mining claims 1/ and declaring the claims abandoned and void because appellant had not recorded the claims with BLM within 90 days after the date of location of those claims. One claim was located on June 6, 1984; other claims were located on June 11 and 14, 1984. Copies of the notices of location for these claims were filed with BLM on September 13, 1984, 1 day later than the 90-day deadline established for the claims located on June 14.

[1] Under 43 U.S.C. § 1744(b) (1982), the owner of an unpatented mining claim located after October 21, 1976, is required to file a copy of the official record of the notice of location or certificate of location with the proper BLM office within 90 days after the date of location of such claim.

1/ The claims are set forth in Appendix A.

Failure to file the instrument within the specified time period shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1982).

Appellant contends that no purpose is served by declaring the claims abandoned unless subsequent claims have been filed on the same property. The result, appellant contends, places an undue hardship on the original locators and adds more expense to BLM. Appellant contends that such action makes "a mockery of the intent of the purpose and objectives of the legislature."

In United States v. Locke, __U.S.__, 105 S. Ct. 1785 (1985), the United States Supreme Court considered the legislative intent behind the conclusive presumption of abandonment in a case where the mining claim owner was 1 day late in making a filing required by 43 U.S.C. § 1744 (1982). The Court concluded that Congress did, in fact, intend for claims to become abandoned when deadlines were missed. The Court noted: "But '[d]eadlines are inherently arbitrary,' while fixed dates 'are often essential to accomplish necessary results.' United States v. Boyle, 469 U.S. ___, ___, 105 S. Ct. 687, 692, 83 L. Ed. 2d 622 (1984). Faced with the inherent arbitrariness of filing deadlines, we must, at least in a civil case, apply by its terms the date fixed by the statute." United States v. Locke, supra at 1792. Thus, appellant's submission must be rejected even for those claims for which the filings were 1 day late.

Other matters mentioned in appellant's statement of reasons provide no basis for reversal of the decision below. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski Will A. Irwin
Administrative Judge

Administrative Judge

2/ Appellant complains about difficulty in having his phone calls returned by BLM. Appellant also complains that Form 1842-1 is vague in that it fails to specify what event triggers the running of the 30-day period within which a notice of appeal must be filed. Inasmuch as appellant filed his appeal timely, he was not prejudiced by any vagueness of language in the form or the alleged failure of BLM to return his telephone calls, in this regard.

APPENDIX A

<u>CLAIM NAME</u>	<u>LOCATION DATE</u>
HL #2A	June 11, 1984
HL #2B	June 06, 1984
HL #2C - HL #2D	June 11, 1984
HL #3A - HL #3D	June 11, 1984
HL #4A - HL #4D	June 11, 1984
HL #5A - HL #5D	June 11, 1984
HL #26D	June 11, 1984
HL #30A	June 11, 1984
HL #41A, #41C - 41D	June 14, 1984
HL #42A - HL #42D	June 14, 1984
HL #45A - HL #45D	June 14, 1984
HL #46A - HL #46D	June 14, 1984
HL #47A - HL #47D	June 14, 1984
HL #48A - HL #48D	June 14, 1984
HL #49A, #49C - #49D	June 14, 1984
HL #50A - HL #50D	June 11, 1984
HL #51A - HL #51D	June 14, 1984
HL #52A - HL #52D	June 14, 1984
HL #53A - HL #53D	June 14, 1984
HL #54A - HL #54D	June 14, 1984
HL #55A - HL #55D	June 14, 1984
HL #56A - HL #56D	June 14, 1984
HL #57A - HL #57D	June 14, 1984
HL #58A - HL #58D	June 14, 1984
HL #59A - HL #59D	June 14, 1984
HL #60A - HL #60D	June 14, 1984
HL #61A - HL #61D	June 14, 1984
HL #62A - HL #62B	June 14, 1984
HL #63A - HL #63D	June 14, 1984
HL #64A - HL #64D	June 14, 1984
HL #65A - HL #65D	June 14, 1984

